

REMARKS

Favorable reconsideration and allowance of the present application are respectfully requested in view of the foregoing amendments and the following remarks.

Currently, claims 69-94 are pending in the present application, including independent claims 69 and 83. Independent claim 69, for instance, is directed to a diagnostic device that comprises a housing. The housing comprises an opening for receiving a sample and a channel in fluid communication with the opening. The diagnostic device also comprises a test strip that defines a test surface which is in fluid communication with the channel. A means for inducing a negative pressure differential on the sample (e.g., syringe) is provided to both direct the sample to the test surface and deliver an unreacted portion of the sample to a chamber.

In the Office Action, previous independent claims 35, 48, 56, and 68 were all rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,677,133 to Oberhardt. Oberhardt is directed to a method for performing an affinity assay comprising: (1) contacting a sample to be assayed for the presence of an analyte with a dry reagent containing the analyte bound to a reaction cascade initiator, an antibody reactive with the analyte, and magnetic particles, to form an assay mixture in a reaction chamber; (2) incubating the assay mixture; (3) applying an oscillating or moving static magnetic field to the assay mixture; (4) activating the reaction cascade initiator to initiate a reaction cascade; (5) monitoring the response of the magnetic particles to the oscillating or rotating magnetic field to provide a time varying signal; and (6) determining the analyte concentration of the sample by analysis of the time varying signal. (Col. 4,

lines 48-64). Oberhardt describes carrying out its affinity assay method using a reaction slide, such as shown in Figures 1-4.

As correctly noted by the Examiner, one embodiment of Oberhardt employs a syringe to add the sample to the sample well 64. (Fig. 3; Col. 6, lines 30-38). However, there is no teaching or suggestion of using the syringe to deliver an unreacted portion of the sample to a chamber. Nevertheless, the Office Action asserts that the syringe is "capable" of clearing the unreacted portion of the sample from the test surface. Even if this were the case, however, the syringe of Oberhardt still would not meet the limitations of independent claims 69 and 83.

More specifically, claims 69 and 83 require a means for inducing a *negative* pressure differential on the sample to *both* direct the sample to the test surface *and* deliver an unreacted portion of the sample to a chamber. For instance, the present application describes a syringe 50 that includes a piston 52 slidingly and sealingly engaged with the inner wall of a cylindrical chamber 56. (See Figs. 1-7). The sample may be directed to the test surface 42 and then to the chamber 56 by simply pulling the handle 54 to induce the required negative pressure differential. To the contrary, the manner in which the syringe is employed in Oberhardt would require a *positive* pressure differential for directing and then a *negative* pressure differential for removing any unreacted portion. Clearly, the syringe of Oberhardt is not capable of fulfilling the limitations of independent claims 69 and 83. Thus, Applicants respectfully submit that independent claims 69 and 83 patentably define over Oberhardt.

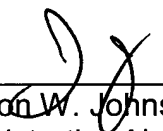
It is believed that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner Snay is invited and

encouraged to telephone the undersigned, however, should any issues remain after consideration of this Amendment.

Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Respectfully submitted,

DORITY & MANNING, P.A.



Jason W. Johnston
Registration No.: 45,675

DORITY & MANNING, P.A.
P.O. Box 1449
Greenville, SC 29602-1449
Phone: (864) 271-1592
Facsimile: (864) 233-7342

Date: 9/14/05